

7(a), must be “in excess of one and one-half times the minimum hourly rate applicable to him under section 6.” The employee’s “regular rate” of pay must be computed, in accordance with the principles discussed above, on the basis of his hours of work in that particular workweek and the employee’s compensation attributable to such hours. The hourly rate thus obtained must be compared with the applicable minimum rate of pay of the particular employee under the provisions of section 6 of the Act. If the latter rate is \$1.60 an hour, for example, then the employee’s regular rate must be *more* than \$2.40 an hour if the exemption is to apply.

**§ 779.420 Recordkeeping requirements.**

The records which must be kept with respect to employees for whom the overtime pay exemption under section 7(i) is taken are specified in § 516.16 of this chapter.

**§ 779.421 Basic rate for computing overtime compensation of non-exempt employees receiving commissions.**

The overtime compensation due employees of a retail or service establishment who do not meet the exemption requirements of section 7(i) may be computed under the provisions of section 7(g)(3) of the Act if the employer and employee agree to do so under the conditions there provided. Section 7(g)(3) permits the use of a basic rate established, pursuant to agreement or understanding in advance of the work, in lieu of the regular rate for the purpose of computing overtime compensation. The use of such a basic rate for employees of a retail or service establishment compensated wholly or partly by commissions is authorized under the conditions set forth in part 548 of this chapter.

**Subpart F—Other Provisions Which May Affect Retail Enterprises**

GENERAL

**§ 779.500 Purpose of subpart.**

In Subpart A of this part, reference was made to a number of regulations which discuss provisions of the Act, such as general coverage, overtime

compensation, joint employment, hours worked, and methods of payment of wages, which are applicable to others as well as to retailers and their employees. (See § 779.6.) In addition to those provisions, the act contains other provisions of interest to retailers and their employees. It is the purpose of this subpart to focus attention on several of the more significant provisions in these categories.

EQUAL PAY PROVISIONS

**§ 779.501 Statutory provisions.**

Section 6(d) of the Act provides:

(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this Act.

(4) As used in this subsection, the term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Official interpretations of the Department of Labor with respect to the